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Bill Whitaker: Looming school property tax debate promises thrills, chills galore

BILL WHITAKER Opinion editor Dec 16, 2017

While Congress finishes tweaking its federal tax-cut bill, it's useful to remember that a significant 44 percent of Americans pay no federal income tax in the first place. And here in Texas the real sore point continues to be property taxes. Cities and counties this year only narrowly avoided seeing tighter percentage caps placed on how much property-tax revenue they can garner from one year to the next.

So consider this news flash, largely overlooked amid other spectacles: During this year's special legislative session, the Texas House Ways and Means Committee began throwing around proposals to scrap the biggest portion of your property tax bill: that devoted to the maintenance and operation of public schools. One proposal would even junk school property taxes without anything to replace an estimated \$23.3 billion in 2021 and \$24.6 billion in fiscal year 2022.

Basic idea: We'll figure all that out later.

"We don't have that in the mattress or the cushions," San Angelo Republican state Rep. Drew Darby acknowledged of his bill. "I assure you if we allow this bill to move forward and we give voters an election to end this [school property taxes], I'll work every day with you for the next two years, with the committee, to make sure we can open our schools in 2020. This is not a repeal-and-replace, it's simply a repeal. This is not a Pogo stick. This is no stick at all."

Attend a local or state hearing on property taxes and you'll often hear the usual suspects vilified: local taxing entities — especially school districts — and county appraisal districts, whose valuations often enough make it possible for taxing entities to bring in more revenue without hiking tax rates. Of course, whether your property goes up in value or the tax rate gets hiked or both, you feel the pain.

That said, Trib contributing columnist Jessica Attas, policy director of the Greater Waco Chamber of Commerce, this year wrote in great detail about other volatile elements that seem to have escaped the notice of irate taxpayers. While school boards and appraisal districts may well deserve scorn on occasion, any discussion about property-tax reform must include the state's role in complicating matters for taxpayers and taxing entities.

For instance, Attas as well as John Kinnaird, chairman of the beleaguered McLennan County Appraisal District board, have noted how the state quietly manipulates local property values from afar (that is, Austin), allowing state legislators to then slyly use our increased property values as an excuse to just as quietly decrease the state's share of per-pupil funding, leaving it to local school districts to make up the shortfall. And when school boards hike taxes to make up the difference, they and the local appraisal district (which must bow to these aforementioned state-set valuations to a degree) conveniently catch all hell about it.

Cruellest irony of all: State officials in recent legislative sessions have tried to restrict local tax-rate increases in a political charade for an all-too-gullible taxpaying public. As Attas noted in her column, the situation is complicated not only for school districts but also cities and counties by ever-increasing unfunded mandates passed along by state legislators and the governor. Many politicians, ironically, have flourished politically by attacking the federal government for being onerous. Now they're attacking local control.

Anyone smell hypocrisy?

That's why the Aug. 2 meeting of the House Ways and Means Committee was so fascinating. A number of bills were discussed, including a bill to provide tax exemptions to Purple Heart recipients (and which, to a degree, represents the growing problem of exemptions peppering the tax code). But the meeting's real energy focused on two revolutionary bills. One, state Rep. Andrew Murr's House Bill 285, would hike the state and local sales tax to something like 14 percent, allowing for a substantial part of the school property tax to be gutted if voters approve statewide.

More revolutionary: Rep. Darby's bill, which would eliminate school property taxes with no plan for any replacement funding. This, he said, would give special impetus to legislators — bound by the state constitution to fund public schools — to come up with a solution rather than dithering or procrastinating. Complicating the matter: a provision in state law that prohibits a state income tax, at least without a vote of the voters. Given that only three basic forms of taxation exist in the first place, this bill would seem to put most of the burden on raising and expanding the sales tax.

Murr's proposal was enough to rattle John Kennedy of the Texas Taxpayers and Research Association: "We think a 14 percent sales tax is not a viable method to reach the goal that Rep. Murr is trying to reach. And I don't think it can be higher. A 14 percent sales tax would make us [the state of Texas] roughly 50 percent higher than the sales tax anywhere else in the country."

One possible drawback: Folks seeking to skirt such sales taxes might order more products online from out of state. How's that for helping small, Mom-and-Pop, brick-and-mortar businesses?

Kennedy accurately noted that, whatever else, the property tax is the most stable of the two taxes available for Texas governmental entities. The sales tax can prove quite volatile, given that people adjust buying habits when times are poor. He also suggested that exemptions in any sales-tax scheme might keep it more reasonable.

On the other hand, State Republican Executive Committee member Terry Holcomb stressed that any plan relying more heavily on the sales tax will work only if the base is broadened: "If we're going to talk about eliminating property taxes and going to the sales tax, you cannot have that conversation without broadening the tax base. We're going to have to have hard conversations about what we're going to do that's best for Texas taxpayers and you are going to have to broaden that base. There is simply no way around it. And that's part of the problem we have today. We have far too many exemptions and the load is continuing to be put on fewer and fewer people and fewer and fewer dollars."

Holcomb also said revenue produced from the state's part of the expanded sales tax should go toward school funding — and not be funneled into covering other expenses.

As the committee hearing dragged on and fewer women remained in the hall, it began to assume the air of a bunch of guys in a deer blind where everyone has lost interest in the deer and begun debating matters in a more frank, even irreverent manner. State Rep. Dennis Bonnen, droll chairman of the House Ways and Means Committee, couldn't keep from poking holes in the things he was hearing, especially considering how just two years ago some in the Texas Legislature were talking about cutting the sales tax.

Now, he noted, lawmakers and others were suddenly brimming with ideas on how to raise it while cutting property taxes. And while those loudly protesting property taxes regularly advocate for an increased sales tax, they're also incredibly picky about broadly applying it. People still want their exemptions.

"The truth is they're politically deadly to touch, many of them," Bonnen said of the wide range of exemptions to sales taxes. "Isn't that kind of weird, though, when you think about it? Let's use residential utilities as an example, which is needed to survive and exist. On one hand, people say, 'Oh, I'd rather pay a sales tax than anything else — but how dare you put a sales tax on that! I prefer that tax, but don't put it on that!'"

A lanky, bald, bespectacled Republican whose wit makes him an acerbic player in House Speaker Joe Straus' buttoned-down, mainstream conservatism, Bonnen at another point put the heat on Vance Ginn, economist of the Center for Fiscal Policy, which functions under the right-wing Texas Public Policy Foundation. Ginn appeared before the committee not only to cheer

the idea of scuttling part of the property tax and going to a sales tax hike but to encourage lawmakers to scrap all property taxes and broaden the sales-tax base to include such things as real-estate transactions.

This was too much for Bonnen, given that Lt. Gov. Dan Patrick two years ago successfully pushed a constitutional amendment prohibiting levying taxes on real-estate transactions. And when Ginn mentioned that the sales-tax rate under his scheme could go from 19.5 percent with all current exemptions in place today to 15.7 percent if real-estate transfer taxes were included, Bonnen lunged.

“You’ve frustrated me,” Bonnen said. “So your goal is to eliminate the property tax, right?”

“Correct,” Ginn said.

“You believe the best way to do that is by increasing and expanding the sales tax, right?”

“Correct.”

“And the cornerstone of that expansion is to go to the sale of property, correct?”

“That’s part of it.”

“And yet you sat silently two years ago when the lieutenant governor drove an initiative to constitutionally prohibit a sales tax on the sale of property.”

“As I said, we didn’t like that portion—”

“But you didn’t say anything!”

“You’d have to have a constitutional amendment anyway to do [all] this.”

“Don’t give me the ‘anyway’ because you don’t respond to my ‘anyways’ so ... *anyway!*”

“No, but you bring up a good point, though.”

Bonnen exploded in sarcasm: “Oh, well, wonderful, thank you so much!”

I strongly suspect that Bonnen was pressing Ginn to acknowledge that, for all his beliefs in a broad sales tax as opposed to property taxes, he didn’t want to tangle with Lt. Gov. Patrick two years ago, something Bonnen seems to relish doing. In any case, Darby’s bill to just scrap school property taxes straight out prompted concern from other lawmakers who kept trying to envision how they would then generate revenue for public schools.

“Let me tell you,” Rep. Richard Peña Raymond remarked during this free-wheeling discussion. “If that [the Darby bill] passes, you’ll never get there again [through property taxes]. I was here when we passed — and I’m trying to remember if anyone else here was — when we did the HJR that said we would not have a state income tax without voter approval. I voted for it. But I knew once we did that, we would never have a state income tax. It just isn’t going to happen. I’m just saying if we pass this, you’re not going to have a property tax [for school operations].”

As lawmakers debated what might replace the school property tax, Darby intervened and lectured his colleagues on his proposal: “Y’all are trying to solve the problem. I think you’re getting off task here. My wife tells me, ‘You guys are all alike. You just want to solve problems. You don’t want to listen!’ And what I’m trying to get you to do is listen. We need to listen. We need to set an attainable goal.”

Despite Darby's exhortation, his fellow legislators kept trying to figure out a tax scenario to fund schools if voters scrapped the school property tax, prompting Raymond at one point to question whether Darby's bill would replace 60 percent of school property taxes or 100 percent.

"No, he's been really clear," Bonnen quipped. "He isn't talking about a damn thing!"

In short, stay tuned. The legislative session of 2019 in Austin could be wild, even without bathroom bills, gun-rights legislation and voter-suppression acts. And under at least one scenario, school finance could walk a long tightrope without a safety net.